

MEMORANDUM

DATE: May 18, 2006

TO: Oil Spill Advisory Council

FROM: Derelict Vessel Technical Advisory Committee

SUBJECT: Recommendations to Full Council on Improvements to the Derelict Vessel Program.

I. Composition of Technical Advisory Council

The Committee was comprised of Brett Bishop, Council Member and Co-chair; Nick Jones, Council Member and Co-chair; Lee Roussel, Council Member; Greg Whittaker, Council Member; and Bruce Marshall, Harbor Director at the Port of Olympia.

Others who participated in the discussions were Rick Mraz, Aquatics, Department of Natural Resources (DNR); Kevin Parrington, Coast Guard (USCG); and Jacqui Brown Miller, Council Staff.

II. Recommendations to Council

The following statements reflect this TAC's recommendations to the full Council regarding reducing oil spills by improving the State's Derelict Vessel Program.

A. Changes to DNR's Program

1. Bifurcated DNR Program and New Revenue Stream for Commercial Vessels

Since the anticipated costs of removing commercial vessels exceeds the funding currently available to the Department of Natural Resources' Abandoned and Derelict Vessel Program, we recommend that the program be bifurcated as between commercial and recreational boats.

We understand DNR spends more revenue on commercial vessels than recreational vessels. However a recreational boat registration fee is the revenue source for the entire program. Therefore, we recommend that additional funding be obtained from commercial vessel owners and operators. We recommend that this revenue stream consist of a charge collected on the sale of fuel to all commercial vessels. We recommend that DNR place this revenue source in a separate account and not mix it with recreational vessel moneys. This revenue would be used only for commercial derelict vessels.

This approach would leave the revenue stream used to handle recreational vessels untouched, leaving recreationally derived revenue to be spent on recreational derelict vessels. This approach is essentially a bifurcation of DNR's program.

DNR currently estimates it will need over \$4 million to eliminate the current commercial derelict vessel "backlog." DNR estimates that if the state raises \$1 million to 1.5 million each year for five years, it will be able to remove the current commercial derelict vessel backlog within that time (including any influx predicted to occur over that time).

We understand the current taxes on marine fuels to be as follows:

- a. There exists a road-fuel-tax-credit program.
- b. Fuels subject to this tax include clear diesel fuel and gasoline.
- c. Dyed diesel is exempt from this tax.
- d. Under the tax-credit program, anyone buying fuel for use off of highways is entitled to a credit (or refund of the tax paid).
- e. The road tax is currently set at thirty-one cents per gallon.

While much of this tax is refundable and everyone is eligible for this rebate, including recreational and commercial boaters, Department of Licensing staff represent that the vast majority of commercial and recreational boaters purchase dyed diesel, not the fuels subject to the tax. Therefore, we recommend that any attempts to gain a revenue stream from commercial vessel owners and operators aim toward a charge on dyed diesel, rather aiming toward a rebate reduction scheme for clear diesel and gasoline.

We understand that the Washington Department of Revenue has knowledge of all primary entities that sell dyed diesel to commercial vessels because Revenue collects sales tax from them. We understand, with certain Legislative changes, that Revenue may be in a good position to add a charge to all dyed diesel transactions and direct that charge to the Derelict Vessel program. We also understand that it may be possible for Revenue to rebate any Derelict Vessel dyed diesel surcharge to recreational boaters via a line-item deduction on its income tax forms.

We recommend that a dyed diesel derelict vessel charge be imposed at the time of sale, along with sales taxes, at all marinas and other facilities where commercial vessels are fueled. We further recommend that either the current recreational vessel registration fee be reduced to reflect the new tax imposed on recreational boaters or that a line-item be added to the State's tax forms to allow recreational boaters to obtain a below the line tax credit for the amounts paid on recreational vessel fuels.

Additionally, we understand that in order to get the fuel tax credit, one must submit a claim form with appropriate documentation to the Department of Licensing. Road taxes are held in an account called the Marine Fuel Tax Refund Account. Apparently, periodically, any unclaimed refunds sitting in this account are swept into the Motor Vehicle Account. It would apparently be possible for the Legislature to sweep all or a certain amount or percentage of the collected tax from this account into a commercial

vessel derelict vessel account. We note this as a point of interest for the Council to consider.

Last, we recommend the Legislature place a five-year sunset provision on this lessening of the tax rebate and establish a cap for the commercial vessel fund. This could be set at \$2 million in light of the anticipated need of \$1 million to 1.5 million in revenue per year to deal with commercial vessels.

We understand that in order to fully implement these ideas will require close consultation with the departments of Licensing, Revenue, and Natural Resources. Our primary goals with any solution is that:

- commercial vessel owners and operators to be responsible for a revenue stream that will assist DNR in handling commercial abandoned and derelict vessels;
- the program not negatively impact recreational boaters or the agricultural sector of the state's economy; and
- ultimate choices are sound and accurately calculated to meet the needs of a commercial abandoned derelict vessel program.

We recommend that the revenue source for this fund sunset after five-years and that DNR provide the Council and the Legislature with a report on whether the size limitation on the size of boats DNR may handle under the Derelict Vessel program could be increased, whether the cap on the fund should be changed, and whether the revenue stream is sufficient or needs adjusting, particularly in light of the upcoming pipeline influx associated with the double hulled requirement.

B. Grant DNR new statutory authority to take temporary custody of a vessel if the vessel poses a reasonably imminent threat to human health or safety, which would include threats from environmental contamination

With this change, DNR could remove vessels that pose an environmental or navigational risk that is not quite great enough to trigger an action by the Coast Guard.

C. Changing Priority Ranking System

There are two recommendations regarding priority ranking.

First, we recommend that DNR leave intact the Priority Ranking of all vessels at the time when any governmental agency steps in to remediate contamination or other threats from the vessel.

We understand that DNR's Priority Ranking could be changed administratively by DNR without legislation.

The purpose of this recommendation is to eliminate likelihood that an entity, like the Coast Guard, will remediate the contamination or navigation threat but must legally leave the boat in place where it can easily become a repeat problem vessel. We understand that if DNR decreases a vessel's Priority Ranking after another entity responds to it, DNR

will be unable to remove the vessel from the water if it falls below other vessels in Priority Ranking. This change will allow DNR to remove vessels before they become re-contaminated.

The caveat to this recommendation may be where a responsible owner owns a boat, even though it is legally considered derelict, such that DNR is assured to its satisfaction that the vessel will not pose an immediate risk.

Second, we recommend that DNR eliminate the Ranking of Priority 3A then moving all of these to Priority 2 Ranking.

If this is done, and the Legislature changes the statute to allow DNR to take temporary custody of vessels that pose a reasonably imminent threat to human health or safety, DNR will have the ability to take temporary possession of more risky and problem vessels (for example those that have sunk but still have fuel aboard).

D. Shutting down the Pipeline of Derelict Vessels

Supporting the need to close the pipeline is the double hulled requirements that are coming in 2015 and are anticipated to cause many vessels to become obsolete if not retrofitted. The double hull requirements will apply to any tank vessel with the capacity to carry 250 barrels of oil or more.

E. Marina Slip Rental Registration Requirement

We recommend that when slips are leased, that marinas and state agencies that lease state-owned aquatic lands require proof of current vessel registration from any state as a condition of the lease before leasing a boat slip. We assume that DNR could do this as marina leases are renewed.

F. Shutting Down Frequent Flyers

On June 7, 2006, the new laws relating to derelict vessel misdemeanors will become effective. This means that a boat owner who causes a vessel to become derelict, can be prosecuted for this crime, which is a misdemeanor.

We endorse this provision. In addition, the Council requests that DNR gather information and statistics on the effectiveness of the misdemeanor language and report back to the Council in one year on the effectiveness of this provision in stopping repeat offenders.

If the misdemeanor sanction is not sufficient to stop repeat offenses, we may want to recommend that the Legislature make it illegal for those who are “frequent flyers” (those with one or more misdemeanor convictions) to own a boat without registering the vessel, having sufficient insurance, or obtaining a sufficient bond to cover costs if the vessel becomes derelict. We are considering the concept of escalating the seriousness of the

offence's classification. For example, we believe this new crime, owning a vessel as a repeat offender without complying with the insurance and bonding requirement, should be a gross misdemeanor or felony. This effort would be to deter derelict owners from continuing to put derelict vessels into the pipeline.

It will be important, before taking this approach, to hear from DNR on how well the newly enacted provisions are working.

F. Amnesty Program

We request that DNR and Ecology investigate and make a recommendation to the council on doing an Amnesty Program that would dispose of unwanted vessels before they become so dilapidated that they become derelict. We also request that DNR provide a statement of any statutory changes it finds would be needed to allow DNR and Ecology to manage and fund this program. We further request that DNR provide us with its ideas on the best funding sources and funding arrangements for an amnesty program.